

Remarks

In response to the non-final Office Action mailed March 24, 2004, the Applicants respectfully requests reconsideration of the rejections and that the case pass to issue in light of the amendments above and the remarks below. By this paper, claims 1-3, 9, 16-18, and 20 are amended, no claims are added or canceled.

The Examiner has rejected and objected to the application for the following reasons: (1) disclosures objected to for reciting "restive" at page 6, line 13; (2) claims 1, 2, 16, 17, and 20 are objected to for including informalities; (3) claims 2, 3, and 9 are rejected under 35 U.S.C. § 112, second paragraph, for failing to include proper antecedent basis; (4) claims 18-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S.P.N. 4,862,875 to Heaton (hereinafter the Heaton patent); and (5) claims 21-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Heaton patent.

The Examiner has indicated that claims 1, 4-8 and 10-17 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. § 112, second paragraph. The Applicants kindly thank the Examiner for the allowance of these claims and note that each of the claims has been rewritten or amended to overcome the rejections thereof.

Objection To Specification

The Examiner has objected to the specification for including an improper spelling of the word "resistive" at page 6 of the specification. The Applicants have amended page 6 of the application to correct the spelling of the word "resistive." It is believed that this amendment obviates this objection.

Objection To Claims

The Examiner has objected to claims 1, 2, 16, 17, and 24 including informalities. The Applicants have amended each of the objected to claims to correct the informalities. It is believed that the amendments obviate these objections.

Rejection of Claims 2, 3, and 9 Under 35 U.S.C. § 112

The Examiner is rejecting claims 2, 3, and 9 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to include proper antecedent basis. The Applicants have amended claims 2, 3, and 9 to provide the proper antecedent basis. It is believed that these amendments obviate these rejections.

Rejection of Claims 18-20 Under 35 U.S.C. § 102(b)

The Examiner is rejecting claims 18-20 under 35 U.S.C. § 102(b) as being anticipated by the Heaton patent. The Applicants respectfully submit that the Heaton patent fails to include each limitation recited in independent claim 18.

Independent claim 18 has been amended by this paper to recited that "each pedal is only mounted to the end of one of the actuating rods." The Heaton patent fails to disclose a pedal that is only mount at one location at the end of the actuating rod.

The Heaton patent includes a pedal 12 that is mounted at a pivot 16 and a bracket 104, i.e. a multiple locations. In fact, the pedals is divided into sections and includes an intermediate pivot 102 about which a top portion of the pedal 12 rotates. Consequently, the Heaton patent fails to disclose that each pedal is only mounted to the end of one of the actuating rods, as recited in independent claim 18.

MPEP § 2131 specifies the standard for anticipation under 35 U.S.C. § 102(b).

It states:

**TO ANTICIPATE A CLAIM, THE REFERENCE MUST
TEACH EVERY ELEMENT OF THE CLAIM**

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Each and every element set forth in independent claim 18 is not expressly or inherently described in the Heaton patent because the Heaton patent fails to disclose the pedal 12 being mounted only to the rod 106. Rather, the Heaton patent discloses that the pedal 12 being mounted at multiple locations so that it can perform a rocking action.

For the foregoing reasons, the Applicants respectfully submit that the Heaton patent fails to disclose each element recited in independent claim 18. Accordingly, independent claim 18 and dependent claims 19 and 20, which depend therefrom include all limitations thereof, are patentable and nonobvious over the Heaton patent.

Rejection of Claims 21-24
Under 35 U.S.C. § 103(a)

The Examiner is rejecting dependent claims 21-24 under 35 U.S.C. § 103(a) as being unpatentable over the Heaton patent in view of official notice. The Applicants respectfully submit that dependent claims 21-24 are patentable for at least the same reasons that independent claim 18 from which they depend, is patentable. In particular, the Applicants submit that the Heaton patent fails to provide any suggestion, motivation, or incentive for teaching that each pedal is only mounted to the end of one of the actuating rods, as recited in independent claim 18. For this reason, the Applicants submit that claims 21-24 are patentable for at least the same reasons that independent claim 18 is patentable. Moreover, the Applicants

contest the Examiner taking official notice that it would be obvious to include the resistive elements recited in dependent claims with the apparatus disclose by the Heaton patent as there is not suggestion to include such element or structures for their operation.

Conclusion

For the foregoing reasons, the Applicants respectfully submit that each rejection has been fully replied to and traverse. The Examiner is respectfully requested to pass this case to issue. The Examiner is invited to call the undersigned attorney if it would further prosecution of this case to issue.

Respectfully submitted,

DANIEL J. DUVERNAY et al.

By


John R. Buser

Reg. No. 51,517

Attorney/Agent for Applicant

Date: 6-24-04

BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075-1238
Phone: 248-358-4400
Fax: 248-358-3351